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No. 04-9728

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

DONALD CURTIS SAMSON -- PETITIONER

vs.

PEOPLE OF THE STATE OF CALIFORNIA -- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION ONE

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

MARTIN KASSMAN
(Counsel of Record)
1032 Irving St., PMB 704
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(415) 564-6732

Attorney for Petitioner
DONALD CURTIS SAMSON

IN THE

SUPREME COURT OF THE UNITED STATES

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In accordance with Supreme Court Rule 15.6, petitioner Donald Curtis Samson submits this reply brief to respond to new points raised in the brief in opposition filed by respondent People of the State of California.

ARGUMENT

Respondent asserts that the California rule allowing suspicionless searches of parolees -- as announced in *People v. Reyes*, 968 P.2d 445 (Cal. 1998), and followed by the Court of Appeal below -- does not conflict with the decisions of other states and of federal appellate courts. (Brief in Opp. 3.) The conflict could hardly be more stark.

The California Supreme Court held in *Reyes* that a warrantless search of the "*person or property*" of a parolee need not be justified by reasonable suspicion; rather, it "is reasonable within the meaning of the Fourth Amendment as long as it is not arbitrary, capricious or harassing." *Reyes*, 968 P.2d at 450 (emphasis added). The Louisiana rule is that a parole officer's "warrantless search of a *parolee and his home*" requires "a reasonable suspicion that criminal activity is occurring." *State v. Bonner*, 811 So. 2d 1151, 1153-54 (La. Ct. App. 2002) (emphasis added). As respondent notes (Brief in Opp. 5), *Bonner* involved the search of a dwelling. *Id.* at 1152. So did *Reyes*. *Reyes*, 968 P.2d

at 452-453 ("We therefore hold that evidence gleaned from *the search of this defendant's residence*, and from other searches conducted under the auspices of standard search conditions in paroles which predate today's decision, need not be excluded from evidence in subsequent criminal proceedings on grounds that the searches were undertaken without reasonable suspicion.") (emphasis added).[1]

It is true that the instant case involved the warrantless, suspicionless search of Mr. Samson's person, not of his residence. Mr. Samson's counsel is not aware of any authority, from any jurisdiction, suggesting that the level of suspicion required for the search of a parolee's person is different from that required for the search of a parolee's home. Indeed, respondent does not assert that there *should* be a difference or that any authority would support such a difference.[2] The Court of Appeal also saw no distinction between the search of a parolee's person and the search of his property; it quoted *Reyes* for the proposition that "'reasonable suspicion is no longer a prerequisite to conducting a

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[1] *Commonwealth v. Hughes*, 836 A.2d 893 (Pa. 2003), and *United States v. Carnes*, 309 F.3d 950 (6th Cir. 2002), likewise involved searches of parolees' homes, as respondent notes (Brief in Opp. 5). *Hughes*, 836 A.2d at 896; *Carnes*, 309 F.3d at 953. As Mr. Samson explained in his certiorari petition, both the Supreme Court of Pennsylvania in *Hughes* and the United States Court of Appeals for the Sixth Circuit in *Carnes* set forth standards for parole searches that conflict with the standard promulgated by the California Supreme Court in *Reyes* and followed by the Court of Appeal below. (Pet. for Writ of Cert. 11-12.)

[2] Respondent argued to the Court of Appeal below that, because of *Reyes*, the court was "not free to accept appellant's position" that reasonable suspicion was required for the warrantless search of Mr. Samson's person. (Respondent's Br. 11.)

search of the subject's *person or property*,'" and it pronounced itself bound to follow *Reyes*. (Opn. 4), quoting *Reyes*, 968 P.2d at 450 (emphasis added).

Respondent also claims that the Ninth Circuit decision in *Moreno v. Baca*, 400 F.3d 1152 (9th Cir. 2003), does not conflict with *Reyes*. (Brief in Opp. 4.) According to respondent, the Ninth Circuit's statement that reasonable suspicion was necessary for a parole search was "dictum," whereas its *holding* was based on the officers' lack of knowledge of the suspect's parole status. (Brief in Opp. 4-5.)

With due respect, respondent is mistaken. After holding that the "reasonable suspicion" standard was applicable (400 F.3d at 1163) and that the police "lacked reasonable suspicion to detain and search" the parolee (*id.* at 1164), the court in *Moreno v. Baca* explicitly stated that it need not decide the constitutional significance of the officers' lack of knowledge of the parole status:

> We need not reach the separate question of whether the search was retroactively justified by the existence of a parole condition that rendered the suspicionless search reasonable, because we hold that the search would not have been reasonable even if the officers knew of Moreno's status as a parolee and the conditions of his parole at the time of the arrest and search.

Moreno v. Baca, 400 F.3d at 1164 n.9.

What respondent dismisses as "dictum," moreover, was expressly characterized by the Ninth Circuit panel majority as a holding:

> Taking into account the reduced privacy rights enjoyed by parolees and the State's interest in rehabilitating parolees and deterring crime, we *hold* that the Constitution requires that a law enforcement officer must, at minimum, have a reasonable suspicion that a parolee has engaged in criminal

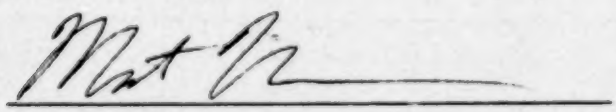
> wrongdoing or violated his parole prior to arresting him or conducting a search of his person.

Id. at 1163 (emphasis added).[3]

For the foregoing reasons, the California rule allowing suspicionless searches of parolees, announced in *People v. Reyes* and applied by the Court of Appeal below, conflicts with decisions of the courts of several other states and federal circuits, which hold that the Fourth Amendment requires at least a "reasonable suspicion" of criminal wrongdoing for the warrantless search of a parolee. The petition for a writ of certiorari should be granted.

Respectfully submitted,

MARTIN KASSMAN
(Counsel of Record)



Attorney for Petitioner
DONALD CURTIS SAMSON

Date: July 20, 2005

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[3] As Mr. Samson noted in his certiorari petition (Pet. for Writ of Cert. 13-14), a concurring judge attacked the majority's holding as legally incorrect and opined that it "should be treated as a bit of dictum." *Moreno v. Baca*, 400 F.3d at 1170-71, 1173 (Clifton, J., concurring in judgment).

MARTIN KASSMAN

ATTORNEY AT LAW

1032 IRVING ST., PMB 704

SAN FRANCISCO, CA 94122

July 20, 2005

Via UPS

Clerk
Supreme Court of the United States
1 First Street, N. E.
Washington, DC 20543

Re: *Samson v. California*, Case No. 04-9728

Dear Sir or Madam:

I represent petitioner Donald Curtis Samson. On his behalf, I have enclosed for filing the original and 10 copies of a Reply to Brief in Opposition to Petition for Writ of Certiorari, along with an original Proof of Service and an original Notice of Change of Address.

I also have enclosed an extra copy of the reply brief and an extra copy of the address change notice in a stamped, self-addressed envelope. Please endorse those extra copies as filed and return them to me.

Thank you for your attention.

Sincerely,

MARTIN KASSMAN

Enclosures

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JUL 25 2005

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SUPREME COURT, U.S.

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IN THE

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NOTICE OF CHANGE OF ADDRESS

PLEASE TAKE NOTICE that as of the date of this document, the attorney for petitioner Donald Curtis Samson has changed his address for service of notices and documents.

The new address of Martin Kassman is now:

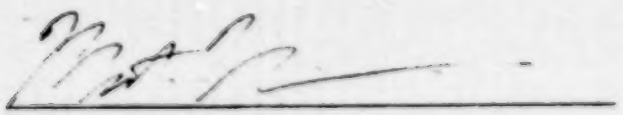
1032 Irving St., PMB 704
San Francisco, CA 94122

Any and all notices and documents regarding this action should now be sent to the above address.

All other contact information for Martin Kassman is unchanged.

Respectfully submitted,

MARTIN KASSMAN
(Counsel of Record)



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PROOF OF SERVICE

I, Martin Kassman, do swear or declare that on this date, July 20, 2005, as required by Supreme Court Rule 29, I have served the enclosed REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI and NOTICE OF CHANGE OF ADDRESS on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows: Ronald E. Niver, Esq., Office of the Attorney General, 455 Golden Gate Ave., Suite 11000, San Francisco, CA 94102-7004.

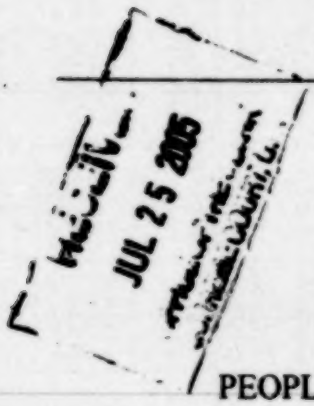
I declare under penalty of perjury that the foregoing is true and correct. Executed on July 20, 2005.

MARTIN KASSMAN

No. 04-9728

IN THE

SUPREME COURT OF THE UNITED STATES



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